

REMARKS

In response to the Office Action dated July 15, 2008, applicants provisionally elect, with traverse, the subject matter of the subject matter of Group I, Claims 1-11, for continued examination herein.

Based on the amendments and comments made herein, reconsideration of the requirement for restriction is respectfully requested.

A requirement for restriction under 35 U.S.C. §§ 121 and 372 (37 C.F.R. §1.499) has been made between the inventions of Group I, Claims 1-11, drawn to a protein powder composition and Group II, Claims 12-24, drawn to a process for preparing a protein powder composition.

In support of the present restriction requirement, the Examiner alleged that the subject matter defined by the claims of the present invention are not so linked as to form a single general inventive concept under PCT Rule 13.1. More specifically, the Examiner alleged that the feature of the Group I invention is the pectin content and degree of esterification, which is not present in Group II. The Examiner further alleged that the special feature of the Group II invention is the specific claimed steps of the process which are not present in Group I.

As indicated above, and in order to be fully responsive to the Examiner's requirement for restriction, applicants provisionally elect to prosecute the subject matter of Group I, Claims 1-11 and reserve the right to file a divisional application directed to the non-elected subject matter in this application, as well as the right to rejoinder.

Nevertheless, pursuant to 37 C.F.R. §1.111 and 1.143, applicants hereby traverse the Examiner's requirement for restriction and request reconsideration thereof for the following reasons.

As indicated by the Office Action, the unity practice as set forth by the Patent Cooperation Treaty dictates the present situation. PCT Rule 13.2 states the following:

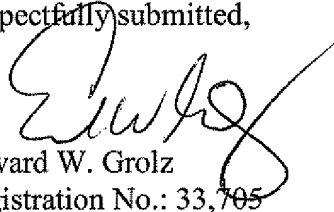
Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression “special technical features” shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. (emphasis added)

The emphasized part of this Rule makes clear that two groups of unitary inventions need not include an identical set of technical features. Rather, it suffices if one or more special technical features are represented in each group of invention. As set forth in the M.P.E.P. §1893.03(d), unity of invention is found where “[i]n addition to an independent claim for a given product, an independent claim for a process specially adapted for the manufacture of the said product...” This section of the M.P.E.P. goes on to indicate that “a process shall be considered to be specially adapted for the manufacture of a product if the claimed process inherently results in the claimed product with the technical relationship being present between the claimed product and claimed process. The words ‘specially adapted’ are not intended to imply that the product could not also be manufactured by a different process.”

In the present application, the method of preparing the protein powder composition has been amended to reflect the fact that the pectin source used in the process has a degree of esterification greater than or equal to 50%. As mentioned above, in support of the restriction

requirement, the Examiner alleged that the feature of the Group I invention not found in the Group II invention is the pectin content and degree of esterification. It is respectfully submitted that this feature is a special technical feature in the sense that in its own right provides novelty over the prior art. Further, exercising the claimed method steps in amended claim 12 inevitably provides a protein powder composition including pectin having an esterification degree of greater than or equal to 50%. Consequently, it is respectfully submitted that unity now exists between Groups I and II and the restriction requirement is respectfully requested to be withdrawn.

Respectfully submitted,



Edward W. Grolz
Registration No.: 33,705

Scully, Scott, Murphy & Presser, P.C.
400 Garden City Plaza- Suite 300
Garden City, NY 11530
(516) 742-4343

EWG:eh